

November 12, 2009

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-0330

RECEIVED

DEC - 9 2009

In Regard to the Matter of:

JOEL SCHNEIDER
U.S. Magistrate Judge

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

GEORGE ALVAREZ

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

THURSDAY, NOVEMBER 12, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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5 Transcript of proceedings in the above
6 matter taken by Theresa O. Mastroianni, Certified
7 Court Reporter, license number 30X100085700, and
8 Notary Public of the State of New Jersey at the
9 United States District Court House, One Gerry Plaza,
10 Camden, New Jersey, 08102, commencing at 3:14 PM.

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1 JUDGE BISSELL: I am reopening
2 proceedings in the case of George Alvarez, docket
3 number 08-0330.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Alvarez.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Alvarez, was housed in Trailer
18 Number Three and the SOG team was called in on
19 August 2nd, 1997, some three days after the death of
20 Officer Baker, to clear the unit for the
21 transportation of inmates to the gym.

22 Mr. Alvarez recounts three incidents of
23 assaults against him. And although I determine, as
24 will be stated more completely hereafter, that his
25 statements with regard to the extent of his injuries

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1 are somewhat exaggerated, I do find that he has made
2 out his claim.

3 As with other cases, particularly where
4 there is contradictory evidence or the opportunity
5 for contradictory inferences as to whether something
6 happened or did not, I have scrutinized the record
7 for conduct as described in the testimony which has,
8 if you will, a ring of truth to it or a set of
9 circumstances that supports the accuracy of what is
10 described. And I find that that's the case here.

11 The SOG units employed various
12 techniques to generate an atmosphere under which the
13 prisoners would be intimidated and, hence, more
14 readily controllable, whether in the incident
15 involved at a given time or as a means of delivering
16 a message which would be expected to endure
17 throughout the lockdown. One of those techniques is
18 accurately described (as in the case of Mr. Alvarez),
19 as inconsistent behavior which essentially put a
20 prisoner between a rock and a hard place and led to
21 him being beaten or retribution exerted against him
22 for following first one set of orders and then
23 another. And that's the case with Mr. Alvarez.

24 I'll try not to belabor this record
25 with lengthy quotes, but beginning at page 12 of his

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1 testimony on September 29th, 2009 with the arrival of
2 the SOG officers, he states as follows:

3 "Answer: Yeah, well, they was
4 hollering, and as they came through -- as they came
5 up the ramp and went through the door, that's when
6 you heard them, you heard them screaming, telling
7 everybody, put your face in the pillows, get down,
8 get down, put your face in the pillows. Started
9 banging the night sticks on the wall and doing that
10 stomp. It was causing a lot of confusion. I didn't
11 know what to do. I never experienced nothing like
12 this in my life. So I just complied. I just did
13 what they asked us to do. So then they ran down --
14 when I said they ran down, the SOGs, a group of guys,
15 how many I don't know specifically, I know a bunch of
16 them ran down our trailer and started hitting on the
17 lockers and telling us to get in the beds, put your
18 face in the pillow. And then, you know, they was
19 banging and hitting on us, get on the bed, get on the
20 bed. If you wasn't on the bed, they would hit you
21 and force you on the bed.

22 "Question: Did you follow their
23 orders?

24 "Answer: I complied. I complied. I
25 was sitting on my bed when they first came down.

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1 When they said put your face in the pillow and hit me
2 with the stick, I just put my face in the pillow.
3 That group of guys ran out and you could hear them
4 running down another wing of the hall and then
5 another set of officers came in and said get on the
6 floor, get on the floor, get on the floor. And then
7 they started hitting us off the beds, pulling us off
8 the mattresses and throwing us on the floor and they
9 hit us and then they ran out. They ran down the
10 tier. Then the first group of guys came back, didn't
11 we tell you to get on the beds? They continued to
12 kick us when we were on the ground.

13 "Question: Mr. Alvarez, I have to ask
14 you -- if you can slow it down a little bit, we're
15 having a difficult time keeping up with you. Try to
16 take it step by step.

17 At some point a group of officers
18 ordered you on the bed and head in the pillow. Did
19 you comply?

20 "Answer: Yes, sir.

21 "Question: After you complied, what
22 happened with that set of officers in your unit?

23 "Answer: I believe they walked out --
24 they ran -- they marched -- they actuall, the whole
25 time they was just marching, and they marched out of

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1 there and you could hear them marching and screaming
2 down the other wings.

3 "Question: So when you were first
4 ordered head in the pillow, were you struck at that
5 time?

6 "Answer: I was struck because I was
7 sitting on my bunk when they first came down the tier
8 and he struck me, told me put my face in the pillow
9 and he hit me. And I laid down and put my face in
10 the pillow. And he said interlock your fingers. So
11 I was my face in the pillow with my hands interlocked
12 like this and I complied. And then another -- I
13 would say it was either the same group, I didn't
14 know, or another group of officers came in and they
15 came in and ordered totally different directions for
16 us to do and they told us to get on the floor. And
17 he hit -- he hit us and pulled us off the bunks --
18 like I know he hit me and grabbed me and shoved me
19 onto the ground and kicked me and said get on the
20 floor, get on the floor. So I complied and I stood
21 on the floor with my face down on the floor and then
22 they ran down the wing. And when they came back out,
23 the first group I'd say, I would say the first group
24 because then they came back talking about didn't we
25 tell you to put your face down in the pillows, what

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1 are you doing on the floor? And they beat us some
2 more and told us to get on the beds."

3 There is some elaboration beyond that.

4 And he was then asked: What parts of
5 his body was struck?

6 "Answer: I was hit all in the face. I
7 was hit in the face. I was hit in the ribs with the
8 night sticks. Punched in the ribs. I was kicked. I
9 was kicked when I was on the ground. I was kicked in
10 the head. I was kicked on the floor. I was punched
11 all about my face, all in my face. My ribs are so
12 sore, I just remember it being so, so, so hard to
13 breathe the first night after it all happened, et
14 cetera."

15 Once again, I find that that's
16 believable, at least to the extent of the conduct of
17 the SOG officers keeping the inmates off balance,
18 giving them inconsistent orders and then inflicting
19 punishment because of it.

20 As I said earlier, I find that there is
21 some overstatement with regard to the extent of the
22 injuries and the extent of the assaults because of
23 the absence of visible indicia thereof at later
24 points throughout the day. I'll deal with that in
25 the question of damages.

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1 The plaintiff then testified beginning
2 at page 20 of the same transcript with regard to his
3 being brought out of his cell and the commencement of
4 the journey, if that's the word to put it, to the
5 gym.

6 Starting at page 20:

7 "Answer: They took me after they told
8 me to get my clothes off and put the handcuffs off
9 me, put the handcuffs on me, they told me -- they
10 didn't tell me, they just shoved me. When they
11 shoved me, I bumped into -- they shoved me into -- I
12 stumbled into the officer. That officer proceeded to
13 hit me, told me that I tried to assault him. And
14 when he hit me, he pushed me into another officer,
15 that officer accused me of trying to assault him and
16 he hit me some more. And they just continued to pass
17 me down and pass me down and pass me down and to each
18 officer I got to, he proceeded to hit on me and shove
19 me. And then I would bump into another one and he
20 said, what are you trying to assault me, too? And he
21 continued to hit me and he passed me until I got to
22 where the door was at. When the last officer shoved
23 me, he shoved me into the steel door. The steel door
24 is when you go up the ramp is the door you have to
25 open there to enter the trailer."

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1 I find that there is credibility in
2 that in the sense that these officers, once again,
3 looking to deliver a message and gain control of the
4 situation, would push an inmate into each other and
5 accuse him of assault and retaliate against him. I
6 find that that occurred on this occasion.

7 He then talks about one other incident,
8 beginning at page 22, line seven.

9 "Answer: At one point when I got to
10 the gate of Three Trailer, the officer grabbed me and
11 threw me up on the fence and started to ask me
12 questions, what gang am I in? And I would say I'm
13 not in no gang. And he would hit me and hit me and
14 hit me and hit me and hit me. He hit me all up in
15 the backs of my ribs. He was hitting me -- he was
16 just hitting me so hard up on my ribs that it felt
17 like he was giving me, like, kidney shots underneath
18 my ribs. And he asked me if I was a cop killer, did
19 I think I was a cop killer. And he would hit me and
20 he would shove me down. And then the next officer
21 grabbed me and threw me up on the fence and did the
22 same thing to me, asking me if I was a King, if I was
23 a Latin King, asking me if I was a Neta. And every
24 time I replied no, they would hit me some more. It
25 continued all the way until it finally ended when I

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1 made it to the gym. The beating stopped when I made
2 it to the gym."

3 And the evidence is that he had a
4 tattoo which was the source of their inquiries as to
5 whether he was a Latin King or Neta member. And that
6 comes out at page 70 of the transcript. Beginning at
7 line five.

8 "Answer: I did say that we only left
9 with boxer shorts and shower shoes and we were
10 handcuffed, because I have a tattoo on my back
11 shoulder that has some praying hands with some
12 rosaries. The officers that seen that tattoo were,
13 like I said, they kept asking me, am I a Latin King
14 or am I a Neta because they thought because I had a
15 tattoo of the rosaries, that they see the rosaries in
16 prison, tattoos of rosaries, they affiliated that
17 with me being involved with some kind of gang or
18 something. They were asking me questions to the
19 extent, then why is the tattoo on your back? Are you
20 a king? They would hit me and they would ask me if I
21 was a cop killer and hit me."

22 Once again, there is supporting
23 evidence to provide a ring of truth for that. There
24 were Latin Kings in the population and these SOG
25 officers, although there only to make a transport to

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1 the gym, were deciding, it seems, to undertake their
2 own bit of investigation and harassment here to
3 determine if this man would at least admit to being a
4 member of a Latin King gang, information which
5 presumably they could pass on to where it was needed.

6 So once again, although I determined
7 that the description of the extent of the beatings
8 inflicted on him is exaggerated because there were no
9 visible signs of that and no reference in ensuing
10 ombudsmen reports or otherwise to injuries of this
11 kind being visible, and particularly the alleged
12 facial beating was exaggerated because the risk of
13 such visible markings and swellings on the face would
14 certainly have brought considerable jeopardy to the
15 officers involved; nevertheless, I do find that this
16 is an accurate description of SOG conduct which I
17 find supportable given the entirety of the situation.

18 Now, I have not disregarded the
19 testimony of Officer Buganski who was on the first
20 shift, who was regularly on the first shift at
21 Trailer Number Four East. However, on September 2nd,
22 he had pulled a shift at Trailer Number Three West.
23 He testified that he believes he would hear the
24 noises of any beatings or screamings on the wings.
25 However, as the testimony here acknowledges and as

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1 has been established in other instances, a standard
2 MO of the SOG people, and there were a large number
3 of them there at the time, was to bang on things with
4 their batons and yell instructions and directions
5 repeatedly. Accordingly, I determined here that
6 there was enough background noise or din generated by
7 the SOGs themselves so that a beating as described by
8 Mr. Alvarez in his cell could take place and that
9 Officer Buganski would not necessarily hear it.

10 He testified that he did not see any
11 injured inmates in the course of this movement,
12 however, there is no indication or certainty that Mr.
13 Buganski saw all inmates from Trailer Number Three in
14 the course of their movement back and forth from the
15 gym.

16 He also stated that he saw no assaults
17 on Three West on August 2nd, but that to me is not
18 conclusive of the fact that they may have occurred
19 even though he didn't see it.

20 Once again, with Mr. Alvarez and his
21 tattoos and a desire on behalf of SOGs to extract
22 from him an admission that he was a Latin King or a
23 Netta, that this conduct took place.

24 As far as his injuries were concerned,
25 I find that there was a pain in the ribs that was

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1 intense for a few days and then lasted several weeks
2 before abating on its own. He sought no medical
3 attention based on threats that he could become lost
4 in the system. However, I do find that at least the
5 injuries inflicted were not so severe as to indicate
6 breakage or to require medical assistance.

7 I find that, consistent with the facts
8 as determined here and the principles of law defining
9 the use of excessive force and with it thereby the
10 infliction of cruel and unusual punishment, the
11 actions undertaken here by the SOG officers not only,
12 in fact, occurred, but they go well beyond the
13 necessity of any proper law enforcement needs or any
14 proper exercise of discipline or other legitimate
15 penalological purpose as well defined in those jury
16 instructions.

17 There was indeed excessive, unnecessary
18 and sadistic force imposed upon Mr. Alvarez in each
19 of the instances that I have just described.
20 Furthermore, I determine that this is one of those
21 instances in which the imposition of punitive damages
22 is appropriate as well.

23 I'm recommending a compensatory award
24 of \$4,500. Keeping in mind the amount of the
25 compensatory damages and realizing that an exact

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1 ratio is not required between punitive and
2 compensatory damages, although it is something that
3 can be considered, I will address that amount in a
4 moment.

5 Perhaps to repeat, there was indeed
6 excessive, unnecessary and sadistic force imposed
7 upon Mr. Alvarez within the contemplation of the
8 legal principles that were established in a claim for
9 compensatory damages. But I also find that the
10 actions of the SOG officers in these particular
11 circumstances were indeed motivated by evil motive or
12 intent. They essentially made sport of Mr. Alvarez
13 here with the tactics which they employed. Their
14 conduct can well be characterized as engaging in
15 reckless and callous indifference to his federally
16 protected right to be free of cruel and unusual
17 punishment.

18 There is, indeed, that aggravated level
19 of conduct here which in my determination supports a
20 claim for punitive damages in this matter.

21 Finally, although not every item of
22 evidence has been discussed in this opinion/report,
23 all evidence presented to the Special Master was
24 reviewed and considered.

25 I find that the injuries inflicted here

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1 are actionable. Once again, they are not as
2 extensive as the plaintiff testified, but they did,
3 indeed, take place as I previously described them.
4 They were acute initially and remained present for
5 several weeks before abating on their own. There was
6 pain incurred by Mr. Alvarez in the time period
7 before it abated. Accordingly, I recommend in this
8 report that the district court enter an award of
9 compensatory damages in the amount of \$4,500 in Mr.
10 Alvarez's favor.

11 As for the award of punitive damages,
12 because as I've mentioned before we have here an
13 instance, frankly, of an evil motive or intent in
14 making sport of Mr. Alvarez, and certainly at the
15 very least a reckless and callous indifference to the
16 consequences of the acts of these people, I recommend
17 in this report that the district court enter an award
18 of punitive damages in the amount of \$9,000 in Mr.
19 Alvarez's favor. So to summarize, I am recommending
20 awards of \$4,500 in compensatory damages and \$9,000
21 in punitive damages.

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1 C E R T I F I C A T E
2

3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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16
17
18


19 Theresa O. Mastroianni, C.S.R.
20 Notary Public, State of New Jersey
21 My Commission Expires May 5, 2010
22 Certificate No. XI0857
23 Date: November 20, 2009
24
25

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